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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,672	10/09/2003	Eric R. Noel	03-1009-01	1813

7590
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EXAMINER

NAJARIAN, LENA

ART UNIT	PAPER NUMBER
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3686

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11/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/683,672	Applicant(s) NOEL, ERIC R.	
	Examiner LENA NAJARIAN	Art Unit 3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 12-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 28-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20040115</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I (claims 1-11 and 28-32) in the reply filed on 5/6/08 is acknowledged. The traversal is on the ground(s) that Groups I and II overlap in scope. This is not found persuasive because subcombination II has separate utility.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 12-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/6/08.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 28-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claims 28, 39, and 31 recite the limitation "the meal order status" in line 1 of claims 28 and 39 and line 2 of claim 31. There is insufficient antecedent basis for this limitation in the claims.

6. Claims 30 and 32 incorporate the deficiencies of claim 28, through dependency, and are also rejected.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Yoshida et al. (US 2003/0059747 A1).

(A) Referring to claim 1, Yoshida discloses an automated method of taking and fulfilling patient meal orders at an institution, comprising

taking the patient's meal order (para. 31 of Yoshida); and

tracking the patient's accumulations of dietary constituents based upon patient meal orders (para. 59 and para. 60 of Yoshida).

(B) Referring to claim 2, Yoshida discloses specifying a diet for the patient (para. 5 of Yoshida).

(C) Referring to claim 5, Yoshida discloses specifying limits of designated dietary constituents for the patient (para. 5 of Yoshida).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida et al. (US 2003/0059747 A1) in view of Mault et al. (US 2002/0133378 A1).

(A) Referring to claim 3, Yoshida does not expressly disclose wherein said step of specifying a diet for the patient further comprises selecting one or more diet types for the patient from a list of diet types.

Mault discloses wherein said step of specifying a diet for the patient further comprises selecting one or more diet types for the patient from a list of diet types (para. 67 of Mault).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Mault within Yoshida. The

motivation for doing so would have been to accommodate patients with various health problems (para. 67 of Mault).

(B) Referring to claim 4, Yoshida does not expressly disclose wherein said step of taking the patient's meal order comprises selecting items presented from a menu, the presentation of which is determined by the diet specified for the patient.

Mault discloses wherein said step of taking the patient's meal order comprises selecting items presented from a menu, the presentation of which is determined by the diet specified for the patient (para. 87 and Fig. 20C of Mault).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Mault within Yoshida. The motivation for doing so would have been to present the appropriate food for selection (para. 87 and Fig. 20C of Mault).

(C) Referring to claim 6, Yoshida does not expressly disclose wherein said step of taking the patient's meal order further comprises monitoring incremental contributions of meal order selections to the patient's accumulation of dietary constituents and providing a warning if a meal order selection causes an accumulation to exceed a specified limit for a designated dietary constituent.

Mault discloses wherein said step of taking the patient's meal order further comprises monitoring incremental contributions of meal order selections to the patient's accumulation of dietary constituents and providing a warning if a meal order selection

causes an accumulation to exceed a specified limit for a designated dietary constituent (Fig. 15 and para. 75 of Mault).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Mault within Yoshida. The motivation for doing so would have been to provide an indication of the progress towards intake goals (para. 75 of Mault).

11. Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida et al. (US 2003/0059747 A1) in view of Coleman (5,839,115).

(A) Referring to claim 7, Yoshida discloses an automated method of taking and fulfilling patient meal orders at an institution, comprising

taking the patient's meal order (para. 31 of Yoshida); and

processing the patient's meal order (para. 16 and para. 66 of Yoshida).

Yoshida does not expressly disclose tracking the status of the patient's meal order.

Coleman discloses tracking the status of the meal order (col. 2, lines 7-13 and col. 5, lines 1-41 of Coleman).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Coleman within Yoshida. The motivation for doing so would have been to indicate the state of the order (col. 2, lines 7-13 of Coleman).

(B) Referring to claim 8, Yoshida does not expressly disclose wherein said step of processing the patient's meal order comprises filling the order by preparing a tray for the patient.

Coleman discloses wherein said step of processing the meal order comprises filling the order by preparing food items for the consumer (col. 4, lines 59-67 of Coleman).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Coleman within Yoshida. The motivation for doing so would have been to track the preparation time for each item ordered (col. 4, lines 59-67 of Coleman).

Yoshida and Coleman do not expressly disclose preparing a *tray*. However, at the time of the invention, it would have been obvious to one of ordinary skill in the art to include a tray with the motivation of providing an easy way of delivering and presenting the meals to the patient.

(C) Referring to claims 9-11, Yoshida does not expressly disclose wherein said tray is given a unique identifier and said step of tracking the status of the patient's meal order comprises tracking the tray by the unique identifier, wherein said step of tracking the patient's meal order comprises entry in a database of the status of the patient's meal order, and wherein the status entered in the database indicates a meal order status selected from the group consisting of meal order taken but not yet fulfilled, meal order fulfilled but not yet delivered, meal order delivered, and meal order cleared.

Coleman discloses wherein said table is given a unique identifier and said step of tracking the status of the consumer's meal order comprises tracking the table by the unique identifier (Fig. 16 of Coleman), wherein said step of tracking the consumer's meal order comprises entry in a database of the status of the consumer's meal order (Fig. 3 and col. 2, lines 7-12 of Coleman), and wherein the status entered in the database indicates a meal order status selected from the group consisting of meal order taken but not yet fulfilled, meal order fulfilled but not yet delivered, meal order delivered, and meal order cleared (col. 4, lines 3-28 of Coleman).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Coleman within Yoshida. The motivation for doing so would have been to monitor the preparation times and make estimates of when orders may be delivered (col. 4, lines 3-28 of Coleman).

Yoshida and Coleman do not expressly disclose preparing a *tray*. However, at the time of the invention, it would have been obvious to one of ordinary skill in the art to include a tray with the motivation of providing an easy way of delivering and presenting the meals to the patient.

12. Claims 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaco (5,465,082) in view of Coleman (5,839,115).

(A) Referring to claim 28, Chaco discloses an automated system for monitoring the meal order status of a patient at an institution, comprising

a database of patient information, including patient location and meal order status (col. 25, lines 47-59 and abstract of Chaco).

Chaco does not expressly disclose a display showing patient meal order status for a plurality of patients by patient location and a user interface to select a patient of interest from the plurality of patients displayed.

Coleman discloses a display showing meal order status for a plurality of consumers by location and a user interface to select a consumer of interest from the plurality of consumers displayed (col. 2, lines 5-17, Fig. 10, and col. 10, lines 39-62 of Coleman).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Coleman within Chaco. The motivation for doing so would have been to be able to look up the state of the orders in order to ensure timely delivery (col. 2, lines 5-17 of Coleman).

(B) Referring to claim 29, Chaco discloses wherein the meal order status comprises the status of the patient's meal tray for those patients for whom meal trays have been prepared (col. 25, lines 47-59 of Chaco).

(C) Referring to claim 30, Chaco discloses wherein the tray status comprises the location of the tray at the institution (col. 25, lines 47-59 of Chaco).

(D) Referring to claim 31, Chaco discloses further comprising an interface to enter the meal order status of a selected patient (col. 25, lines 47-67 of Chaco).

(E) Referring to claim 32, Chaco discloses further comprising an interface for entering and changing the location of a designated patient (col. 26, lines 33-62 of Chaco).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches a method and system for measurement of intake of foods, nutrients and other food components in the diet (5,233,520); an information service system at hospital, nursing home or other institute (US 2002/0111831 A1); a method and system for improving adherence with a diet program or other medical regimen (US 2004/0116780 A1); a diet method and apparatus (US 6,296,488 B1); an electronic waiter system (US 2002/0026364 A1); and a personalized hand held calorie computer (5,890,128).

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LENA NAJARIAN whose telephone number is (571) 272-7072. The examiner can normally be reached on Monday - Friday, 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/L. N./
Examiner, Art Unit 3686
In
11/7/08

/Gerald J. O'Connor/
Supervisory Patent Examiner
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